

# General conditions of sales and delivery (Version 19. December 2005)

## 1. General

**1.1** The contract shall be deemed to have been entered into upon receipt of supplier's (Rotor Lips Ltd.) written acknowledgement stating its acceptance of the order, provided no legal signature is required. Rotor Lips Ltd. may supply also without order confirmation. The contract is final in this case with the verbal or written order. Offers which do not stipulate an acceptance period shall not be binding.

**1.2** Unless otherwise agreed upon in writing, these general conditions of sales and delivery shall be binding. Any conditions stipulated by the customer which are in contradiction to these general conditions shall only be valid if expressly acknowledged by the supplier in writing.

**1.3** All agreements and legally relevant declarations of the parties to the contract must be in writing in order to be valid. Declarations in text form which are transmitted by or recorded on electronic media will be equated with written declarations when specifically so agreed by the parties.

**1.4** Should a provision of these general conditions of sales and delivery prove to be wholly or partly invalid, the parties to the contract shall jointly seek an arrangement having a legal and economic effect which will be as similar as possible to the invalid provision.

## 2. Scope of supplies and services

The supplies and services are exhaustively specified in the order confirmation and in appendices thereto. The supplier shall be entitled to make any changes which lead to improvements.

## 3. Technical documents

**3.1** Unless otherwise agreed upon, advertising documents of any kind as brochures and catalogues are not binding. Data provided for in technical documents are only binding in so far as having been expressly stipulated as such.

**3.2** Rotor Lips Ltd. retains all rights to technical documents provided to the customer. The party receiving such documents recognises these rights and shall – without previous written consent of the other party – not make these documents available to any third party, either in whole or in part, nor use them for purposes other than those for which they were handed over.

## 4. Regulations in force in the country of destination and safety devices

**4.1** The customer shall, at the latest when placing the order, draw the attention of the supplier to the standards and regulations applicable to the execution of the supplies and services, food and hygiene regulations, to the operation of the plant as well as to the health and safety of personnel.

**4.2** Additional or other safety devices shall be supplied to the extent as having been expressly agreed upon.

## 5. Prices

**5.1** Unless otherwise agreed upon, all prices shall be deemed to be net ex works, excluding packing and excluding Value Added Tax (VAT), in freely available Swiss francs without any deduction whatsoever. Any and all additional charges, such as, but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer. Likewise, the customer shall bear any and all taxes, fees, levies, customs duties and the like which are levied out of or in connection with the contract, or shall refund them to the supplier against adequate evidence in case the supplier is liable for them.

**5.2** The supplier reserves the right to adjust the prices in case the wage rates or the raw material prices vary between the submission of the tender and the contractually agreed performance.

In addition, an appropriate price adjustment shall apply in case:

- the delivery time has been subsequently extended due to any reason stated in Clause 8.3, or
- the nature or the scope of the agreed supplies or services has changed, or
- the material or the execution has undergone changes because any documents furnished by the customer were not in conformity with the actual circumstances, or were incomplete.

**5.3** Rotor Lips Ltd. reserves the right to charge an administrative fee of 50 Swiss francs for orders totalling less than 100 Swiss francs.

## 6. Terms of payment

**6.1** Payments shall be made by the customer at supplier's domicile according to the agreed terms of payment, without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like. Unless otherwise agreed upon, the full price shall be paid within 30 days after the date of issue of the invoice. Payment shall be deemed to be effected as far as Swiss francs have been made freely available to the supplier at supplier's domicile. In case payment by bills of exchange is agreed, the customer shall pay the cost of discounting of such bills, bill of exchange taxes and collection charges.

**6.2** The dates of payment shall also be observed if transport, delivery, erection, commissioning or taking over of the supplies or services is delayed or prevented due to reasons beyond supplier's control, or if unimportant parts are missing, or if post delivery work is to be carried out without the supplies being prevented from use.

**6.3** If advance payment or contractually agreed securities are not provided in accordance with the terms of the contract, the supplier shall be entitled to adhere to or to terminate the contract, and shall in both cases be entitled to claim damages. If the customer, for any reason whatsoever, is in delay with a further payment, or if the supplier is seriously concerned that it will not receive payments in total or in due time because of circumstances having taken place since entering into the contract, the supplier, without being limited in its rights provided for by law, shall be entitled to refuse the further performance of the contract and to retain the supplies ready for dispatch until new terms of payment and delivery will have been agreed and until the supplier will have received satisfactory securities. If such an agreement cannot be reached within a reasonable time, or in case the supplier does not receive adequate securities, the supplier shall be entitled to terminate the contract and to claim damages.

**6.4** If the customer delays in the agreed terms of payment, it shall be liable, without reminder, for interest with effect from the agreed date on which the payment was due at a rate depending on the terms prevailing at the customer's domicile, but not less than 4 per cent over the current rate of discount of the Swiss National Bank. The right to claim further damages is reserved.

## 7. Reservation of title

The supplier shall remain the owner of all supplies until having received the full payments in accordance with the contract. The customer shall cooperate in any measures necessary for the protection of supplier's title. In particular upon entering into the contract it authorises the supplier to enter or notify the reservation of title in the required form in public registers, books or similar records, all in accordance with relevant national laws, and to fulfil all corresponding formalities, at customer's cost. During the period of the reservation of title, the customer shall, at its own cost, maintain the supplies and insure them for the benefit of the supplier against theft, breakdown, fire, water and other risks. It shall further take all measures to ensure that the supplier's title is in no way prejudiced.

## 8. Delivery time

**8.1** The delivery time shall start as soon as the contract is entered into, all official formalities such as, but not limited to, import, export, transit and payment permits have been completed, payments due with the order have been made, any agreed securities given and the main technical points settled. The delivery time shall be deemed to be observed if by that time the supplier has sent a notice to the customer informing that the supplies are ready for dispatch.

**8.2** Compliance with the delivery time is conditional upon customer's fulfilling of its contractual obligations.

**8.3** The delivery time is reasonably extended:

- a) if the information required by the supplier for performance of the contract is not received in time, or if the customer subsequently changes it thereby causing a delay in the delivery of the supplies or services;
- b) if hindrances occur which the supplier cannot prevent despite using the required care, regardless of whether they affect the supplier or the customer or a third party. Such hindrances include, but shall not be limited to, epidemics, mobilisation, war, revolution, serious breakdown in the works, accidents, labour conflicts, late or deficient delivery by subcontractors of raw materials, semi finished or finished products, the need to scrap important work pieces, official actions or omissions by any state authorities or public bodies, natural catastrophes, acts of God;
- c) if the customer or a third party is behind schedule with work it has to execute, or with the performance of its contractual obligations, in particular if the customer fails to observe the terms of payment.

**8.4** The customer is not entitled to claim any damages for delay. All further liability is impossible.

## 9. Packing

Packing shall be charged for separately by the supplier and shall not be returnable. However, if it is declared as supplier's property, it shall be returned by the customer, carriage paid, to the place of dispatch.

## 10. Passing of benefit and risk

**10.1** The benefit and the risk of the supplies shall pass to the customer by the date of their leaving the works.

**10.2** If dispatch is delayed at the request of the customer or due to reasons beyond supplier's control, the risk of the supplies shall pass to the customer at the time originally foreseen for their leaving the works. From this moment on, the supplies shall be stored on the account and at the risk of the customer.

## 11. Forwarding, transport and insurance

**11.1** The supplier shall in time be notified of special requirements regarding forwarding, transport and insurance. The transport shall be at customer's expense and risk. Objections regarding forwarding or transport shall upon receipt of the supplies or of the shipping documents be immediately submitted by the customer to the last carrier.

**11.2** The customer shall be responsible for taking insurance against risks of any kind.

**11.3** Unless otherwise agreed upon with the forwarding agent, the customer must make available suitable devices and personnel for the transport of the supply from the delivery vehicle to the erection place.

## **12. Inspection and taking-over of the supplies and services**

**12.1** As far as being normal practice, the supplier shall inspect the supplies and services before dispatch. If the customer requests further testing, this has to be specially agreed upon and paid for by the customer.

**12.2** The customer shall inspect the supplies and services within a reasonable period and shall immediately notify the supplier in writing of any deficiencies. If the customer fails in doing so, the supplies and services shall be deemed to have been taken over.

**12.3** Having been notified of deficiencies according to Clause 12.2, the supplier shall as soon as possible remedy them, and the customer shall give the supplier the possibility of doing so.

**12.4** Normally no taking-over procedure shall be accomplished. The carrying out of a taking-over test as well as laying down the conditions related thereto needs a special agreement.

**12.5** Taking-over shall also be deemed completed:

- if the taking-over test cannot be carried out on the date provided for due to reasons beyond supplier's control;
- if the customer refuses the acceptance without being entitled to do so;
- if the customer refuses to sign the taking-over report prepared in accordance with Clause 12.4;
- as soon as the customer uses the supplies or services.

**12.6** Deficiencies of any kind in supplies or services shall not entitle the customer to any rights and claims other than those expressly stipulated in Clauses 12.4 and 13 (guarantee, liability for defects).

## **13. Erection**

If the erection is intended to be done by Rotor Lips Ltd., then the customer has to store the supplies at his expense and his risk in safe and dry areas from the time of delivery up to the time of erection. Erection costs are to be paid by the customer in addition to the purchase price. During the entire erection period the customer must ensure reasonable conditions of work for the personnel (e.g. temperature, lighting etc.). Before the beginning of erection all necessary pre-working must be provided as agreed (e.g. foundations, break-throughs etc.). If the erection retards or must be interrupted because of the construction project, then the customer must bear all the additional cost. Unless otherwise agreed upon, the customer has to furnish:

- all feed lines and off takes (power, water, gas etc.) with all necessary safety precautions and all necessary grants.
- the supply of power, water, gas and all materials necessary for the start-up and the test runs.
- foundations, consoles, landings, stands etc.
- remedy for abnormal fluctuations in the power supply.

## **14. Guarantee, liability for defects**

### **14.1 Guarantee period**

The guarantee period for new machines produced by Rotor Lips Ltd. and corresponding attachments is 12 months, or 6 months in case of a multi-shift system or industry like food preparation. In any case guarantee ends after 2'000 operating hours and all wear parts are expressly exempt from the guarantee. It starts when the supplies leave the works or at the taking-over of the supplies and services should such taking-over have been agreed upon before, or, if the supplier undertakes the erection, upon completion thereof. If dispatch or taking-over or erection are delayed due to reasons beyond supplier's control, the guarantee period shall end not later than 18 months after supplier's notification that the supplies are ready for dispatch. For replaced or repaired parts the guarantee period starts new and lasts 6 months after replacement or completion of the repair or taking-over. The guarantee expires prematurely if the customer or a third party undertakes inappropriate modifications or repairs or if the customer, in case of a defect, does not immediately take all appropriate steps to mitigate the damage and give the supplier the possibility of remedying such defect.

### **14.2 Liability for defects in material, design and workmanship**

Upon written request of the customer, the supplier undertakes at its choice to repair or replace as quickly as possible any parts of the supplies which, before the expiry of the guarantee period, are proved to be defective due to bad material, faulty design or poor workmanship. Replaced parts shall become supplier's property. The supplier shall bear the costs of remedying the defective parts in its works. If the repair cannot be carried out in supplier's works, the customer shall bear the related costs of transport, personnel, travelling, living, dismantling and reassembly.

Any return of supplies within the scope of a guarantee claim requires consultation with Rotor Lips Ltd. prior to shipping. All cases are to be handled individually and it remains up to Rotor Lips Ltd. to specify the measures with regards to repair or replacement. All costs incurred to Rotor Lips Ltd. by returned machines without prior return material authorisation will be fully at the customer's expense.

### **14.3 Liability for express warranties**

Express warranties are only those which have been expressly specified as such in the order acknowledgment or in the specifications. An express warranty is valid until the expiry of the guarantee period at the latest. If a taking-over test has been agreed, the warranty shall be deemed to have been fulfilled as soon as the test results prove the relevant quality or capacity. If the express warranties are not or only partially achieved, the customer may require the supplier to carry out the improvements

immediately. The customer shall give the supplier the necessary time and possibility of doing so.

Each further liability is impossible.

### **14.4 Exclusions from the liability for defects**

Excluded from supplier's guarantee and liability for defects are all deficiencies which cannot be proved to have their origin in bad material, faulty design or poor workmanship, e.g. those resulting from normal wear, improper maintenance, insufficient or unqualified cleaning, inappropriate handling, failure to observe the operating instructions, excessive loading, use of any unsuitable material, influence of chemical or electrolytic action, building or erection work not undertaken by the supplier, or resulting from other reasons beyond supplier's control. Rotor Lips Ltd. is not responsible for damages, due to modifications of the object of purchase or repair attempts by the customer or third parties.

Rotor Lips Ltd. is not responsible for damage, which finds their cause in changes in the purchase object or in repair attempts by the customer or third.

### **14.5 Supplies and services of subcontractors**

Rotor Lips Ltd. doesn't assume any guarantee and liability for supplies and services of subcontractors.

### **14.6 Exclusivity of guarantee claims**

With respect to any defective material, design or workmanship as well as to any failure to fulfil express warranties, the customer shall not be entitled to any rights and claims other than those expressly stipulated in Clauses 14.1 to 14.5.

### **14.7 Liability for additional obligations**

The supplier is only liable to the extent of unlawful intent or gross negligence as far as claims arising out of faulty advice and the like or out of breach of any additional obligations are concerned.

## **15. Termination of the contract by Rotor Lips Ltd.**

The contract shall be adapted appropriately, if unforeseen events considerably change the economic effect or the content of the supplies or services or considerably affect the activities of the supplier, or if performance subsequently becomes impossible. In so far as such adaptation is economically not justifiable, the supplier shall be entitled to terminate the contract or the parts affected thereby. If the supplier wishes to terminate the contract it shall – after having recognised the consequences of the event – immediately inform the customer; this applies even if an extension of the delivery time has been agreed before. In case of termination of the contract the supplier shall be entitled to the payment of those parts of the supplies and services which have already been carried out. Claims for damages on the part of the customer because of such termination are excluded.

## **16. Exclusion of further liability on the supplier's part**

All cases of breach of contract and the relevant consequences as well as all rights and claims on the part of the customer, irrespective on what ground they are based, are exhaustively covered by these general conditions of supply. In particular, any claims not expressly mentioned for damages, reduction of price, termination of or withdrawal from the contract are excluded. In no case whatsoever shall the customer be entitled to claim damages other than compensation for costs of remedying defects in the supplies. This in particular refers, but shall not be limited, to loss of production, loss of use, loss of orders, loss of profit, compensation or satisfaction claimed by end users and other direct or indirect or consequential damage. This exclusion of liability also applies to unlawful intent or gross negligence of persons employed or appointed by the supplier to perform any of its obligations.

## **17. Right of recourse of Rotor Lips Ltd.**

If, through actions or omissions of the customer or of persons employed or appointed by it to perform any of its obligations, personal injury or damage to the property of third parties occurs and if a claim is made against the supplier, then the latter shall be entitled to take recourse against the customer.

## **18. Jurisdiction and applicable law**

**18.1** The place of jurisdiction for both the customer and Rotor Lips Ltd. is Thun, Switzerland.

Rotor Lips Ltd. shall, however, be entitled to sue the customer at the latter's registered address.

**18.2** The contract shall be governed by Swiss substantive law. In the case of doubt the German version of this document applies.